

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Time Warner Cable)	File Number EB-02-LA-278
3701 N Sillect Ave)	NAL/Acct. No. 200332900002
Bakersfield, CA 93308)	FRN # 0007935562

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 30, 2002

By the Enforcement Bureau, Los Angeles Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Time Warner Cable ("TWC"), the owner of cable television system serving Bakersfield, California (Community Unit # CA0173) apparently willfully and repeatedly violated Section 76.1700(a) of the Federal Communications Commission ("FCC") Rules and Regulations ("Rules"), by failing to maintain all required material in the system's public inspection file.¹ We conclude, pursuant to Section 503(b) of the Communication Act of 1934, as amended ("Act"),² that TWC is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On July 30, 2002, an agent from the FCC Enforcement Bureau's Los Angeles Field Office inspected the TWC cable system located in Bakersfield, California, FCC Physical ID Number 004343, Community Unit # CA0173. According to FCC records, TWC's Bakersfield cable system serves more the 5000 subscribers. During the inspection, the agent noted that the public inspection was missing required material. The file had not been updated with required commercial records on children programs since 2000; did not contain required proof of performance test data from the winter of 2001 or the spring of 2002; and did not include any of the required signal leakage log and repair records since the 2nd quarter of 2001. In addition, the public inspection file did not contain a statement of the operators interest in video programming.

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply

¹ 47 C.F.R. § 76.1700(a).

² 47 U.S.C. § 503(b).

substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeatedly" means the commission or omission of such act more than once or for more than one day.³

4. Section 76.1700(a) of the Rules states, in part, "[t]he operator of every cable television system having 5000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §§ 76.1701 (political file); 76.1715 (sponsorship identifications); 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof of performance test data); 76.1706 (signal leakage logs and repair records).⁴ In addition, section 76.1710 of the Rules provides that cable operators are required to maintain records in their public file regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they have an attributable interest.⁵ On July 30, 2002, TWC's public inspection file was missing much of the required material, including commercial records for children's programming, proof of performance test data, signal leakage logs and repair records, and records of attributable interests in video programming. Based on the evidence before us, we find that TWC willfully and repeatedly violated Section 76.1700(a) of the Rules by failing to maintain the required public inspection file.

5. Pursuant to Section 1.80 of the Rules and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁶ the base forfeiture amount for violation of public file rules is \$10,000.⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 ("Act"), as amended, which include the nature,

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act. ..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(1), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁴ 47 C.F.R § 76.1700(a).

⁵ 47 C.F.R § 76.1710.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 C.F.R. § 1.80.

circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, TWC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000), for willful and repeated violation of Section 76.1700(a) of the Rules.⁹

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, TWC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number ("FRN") and the NAL/Acct. No. referenced in the caption.

9. The response, if any, must be mailed to Federal Communication Commission, Office of the Secretary, 445 12th Street, S. W., Washington, DC 20554, Attn. Enforcement Bureau, Technical & Public Safety Division, and must include the NAL/Acct. No. referenced in the caption.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communication Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. §§ 0.11, 0.311, 1.80, 76.1700(a).

¹⁰ See 47 C.F.R. § 1.1914.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by regular mail and Certified Mail # 7001 2510 0001 9914 5883, Return Receipt Requested, to Time Warner Cable, 3701 N Sillect Ave., Bakersfield, CA 93308.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director, Enforcement Bureau

FCC List of Small Entities

As described below, a “small entity” may be a small organization,
a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

International Services	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHZ Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or
Broadband Personal Communications Services (Block F)	

Narrowband Personal Communications Services	less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and

	persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)